

**PLANNING BOARD MEETING MINUTES
TUESDAY, FEBRUARY 13, 2007**

MEMBERS PRESENT: Jay Cruz, Chair
Paula Caron, Vice-Chair
Paul Fontaine, Jr.
Nancy Maynard

MEMBERS ABSENT: John DiPasquale
Michael Hurley

PLANNING OFFICE: David Streb, Mike O'Hara

OTHER CITY OFFICIALS: Deborah Phillips, City Solicitor, Denis Meunier, Commissioner of Public Works

Call to Order

Meeting called to order at 6:05 p.m. in the Veteran's Room, First Floor, City Hall.

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Communications

City Solicitor Deborah Phillips addressed the Planning Board regarding the ongoing litigation between Benjamin Builders and the City of Fitchburg. She gave a brief history of the subdivision – that the plan was approved in February of 2002, some abutters appealed the decision thereafter and ultimately settled the case. The plan was endorsed by the Planning Board in September 2004. A tri-party agreement in the amount of \$262,000 was approved by the board in January of 2005. In May of 2006 a letter was sent requesting a release of the bond, asserting that all work was completed at the site. In June of 2006 the Planning Coordinator responded with a request for funds for an outside review of the project, and failed to copy the City Clerk via certified mail. In September of 2006 a lawsuit was filed for release of the bond, citing failure to comply with MGL Chapter 41, Section 81U. The city subsequently answered the suit and counter-claimed that the work at the subdivision was not completed properly.

The \$262,000 is delineated in a long list of specific items, and the city cannot hold money for items not on that list, or an amount that exceeds that listed for each item on the list. Ms. Phillips passed out a proposed settlement agreement that showed \$10,000 in work that remained to be done in the subdivision.

Mr. Cruz asked if stump grindings were placed in the slope behind the house lots on the left. Paula also asked why the slopes weren't built according to the approved plan. Ms. Phillips replied that there was no final grading plan shown on the plan, and case law shows that we can't win a case to enforce final grades or disturbances of open space even if they are shown on an approved plan.

Mr. Cruz asked about Vollmer Engineering's report on Detention pond B and C. Ms. Phillips replied that Vollmer has not been involved since the original report was prepared, as the city lacks funds to pay them.

Mr. Streb clarified that the original letter to Gary Lorden in response to his request for a reduction in the amount of the tri-party agreement was for money for a 53G account to pay for a review of the detention ponds.

Mr. Cruz asked Denis Meunier if he was satisfied. Denis said yes, after the items on the list are completed.

Mr. Streb said that an additional item that concerned some people was the stability of the slopes behind lots 1-7. Ms. Phillips said the slopes are a non-starter – we can't challenge the slopes.

Ms. Caron asked about suggestions for improving the Subdivision Rules and Regulations. Ms. Phillips said that she'd be happy to make some suggestions. There are a lot of good things in our rules, such as the 53G paragraph.

Denis Meunier reiterated how important it is to get money for inspectional services.

Ms. Phillips requested a vote to release the bond to \$10,000 and a vote to approve the settlement agreement. Also, to state that improvements to Basic C is a minor modification.

Mr. Fontaine said he felt that the city should refuse to accept the open space (primarily the open space containing the steep grades). Ms. Phillips said that she would feel the same way if she was a board member.

Mr. Cruz asked the board how they felt about open space. A decision was made by the board to refer the matter to the conservation commission for input on the matter of open space in the project. A decision on the matter will wait until the conservation commission discusses the matter.

The board voted to reduce the amount of the Tri-Party agreement to \$10,000.

The board then voted to authorize the City Solicitor to settle the case, and to approve the settlement agreement.

The board then voted to approve the modification of the detention pond as a minor modification, and that no public hearing is required.

All votes were unanimous.

Meeting adjourned: 7:00 p.m.

Next meeting: Feb. 20, 2007

minutes approved: 3-20-07